

Message

From: Richard Wade [rwade@councilbluffs-ia.gov]
Sent: 5/26/2020 3:07:51 PM
To: Chiccine, Catherine [chiccine.catherine@epa.gov]
Subject: RE: Citizens Gas and Electric
Attachments: ATT00001.txt

Cathy,

Thank you for the voice messages and email. At his point do I need to take any further action regarding the Administrative Settlement Agreement?

Sincerely,

Richard Wade
City Attorney
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503
(712) 890-5317 phone
(712) 322-9255 facsimile

Interoffice ext. 5321



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From: Chiccine, Catherine <chiccine.catherine@epa.gov>
Sent: Friday, May 22, 2020 9:21 AM
To: Richard Wade <rwade@councilbluffs-ia.gov>
Subject: Citizens Gas and Electric

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Richard,

Thank you for providing me the Phase I and Phase II that the City performed on its parcels at the Citizens Gas site, as well as information regarding the right-of way the City owns over 7th Street.

On January 11, 2002, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was amended by the enactment of Public Law 107-118, entitled the Small Business Relief and Brownfield Revitalization Act. Among other things, these amendments, at 42 U.S.C. § 9607(q)(1)(C), provide a limitation on liability for any person who

qualifies as a bona fide prospective purchaser (BFPP) of contaminated property. A BFPP is defined in 42 U.S.C. § 9601(40) as a person who acquires ownership of a facility after the date of enactment of the amendments, January 11, 2002, and establishes each of the following by a preponderance of the evidence:

1. All disposal of hazardous substances at the facility occurred before the person acquired the facility.
2. The person made all appropriate inquiry into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.
3. The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.
4. The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to: (a) stop any continuing release; (b) prevent any threatened future release; and (c) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.
5. The person provides full cooperation and access to persons authorized to conduct response actions or natural resource restoration.
6. The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control.
7. The person complies with any request for information or administrative subpoena under CERCLA.
8. The person is not potentially liable, or affiliated with any other person who is potentially liable, for response costs at the facility through any direct or indirect familial relationship or any contractual, corporate or financial relationship, or as the result of a reorganization of a business entity that was potentially liable.

To qualify as "all appropriate inquiries," a Phase I must be completed within 6 months prior to purchase of the site property. Based on my review of the Phase I and Phase II, the City has conducted all appropriate inquiries required by CERCLA and therefore, based on information currently available to EPA, EPA does not consider the City a potentially responsible party (PRP) at this time. However, should EPA discover new information indicating the City's liability as a PRP, EPA retains its enforcement authority.

Note that to remain a BFPP, the City must continue to follow the requirements set forth in Section 9601(40), such as provide access and comply with any land use restrictions. If you have further questions about the other obligations, please feel free to contact me, or consult the EPA guidance documents, such as the "Common Elements" guidance (available at <https://www.epa.gov/sites/production/files/documents/common-elem-guide.pdf>), which construes certain of these statutory elements (e.g., threshold criteria, continuing obligations, etc.), and applicable case law.

Additionally, based on information currently available to EPA, EPA does not consider the City's mere right-of-way interest in 7th Street a sufficient interest to impose liability on the City as an owner or operator of the Site. Again, should EPA discover new information indicating the City's liability as a PRP, such as moving contaminated media and exacerbating the contamination at the site, EPA retains its enforcement authority.

Please do not hesitate to contact me if you have any questions or would like to discuss further.

Best regards,

Cathie Chiccine | Attorney-Advisor
United States Environmental Protection Agency, Region 7
913.551.7917 | 11201 Renner Boulevard, Lenexa, Kansas 66219
chiccine.catherine@epa.gov